IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 22 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANHARDAS NARSANG BHAI NIMAVAT

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR DP JOSHI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/06/2001

ORAL JUDGEMENT

#. This revision is directed against the order dated 4-11-2000 of the Additional Sessions Judge, Rajkot Shri MS Shah dismissing the application of the revisionist for not framing charge under sec.5 of the Explosives Act.

#. Shri YS Lakhani, learned counsel for the revisionist and Shri DP Joshi, learned APP have been heard.

#. The brief facts are that, a petrol pump was run by the revisionist and his partners. It was to be shifted to another place. It is argued that at the old place, possession was handed over to the Government authorities and petrol pump started running at the new place. Still, the revisionist and his companions did not remove the tank for diesel, petrol, etc. and on the fateful day, the revisionist and others were mixing petrol, diesel, naptha and solvent at the old place. Shri Lakhani argues that due to electric short circuit or spark fire broke out and explosion was caused in the tank. The revisionist and others were sent up to face trial under secs.308, 120-B, 114 and 447 of the Indian Penal Code, secs.3 and 7 of the Essential Commodities Act, secs.9-B, AB and 12 of the Explosives Act and sec.5 of the Explosive Substances Act.

#. An application was given by the revisionist that the provisions of sec.5 of the Explosive Substances Act are not attracted on the facts and circumstances of the case and even according to the allegations made by the prosecution against the revisionist and his companions. This application did not find favour with the trial Judge who rejected the same and ordered framing of charges under all the sections mentioned above. Shri Lakhani has argued that sec.5 of the Explosive Substances Act is not applicable, hence, the charge under this section can not legally be framed by the Additional Sessions Judge. According to him, order for framing of charge under sec.5 of the Explosive Substances Act is, therefore, unwarranted and illegal. He has also referred to a letter dated 20-2-2001 received from the Government of India addressed to Shri Tejas J.Patel, in which, it was mentioned that it is intimated that storage of petrol/ diesel/ naptha/ solvent are not covered under the Explosive Substances Act. It was further mentioned that, however, it is confirmed that the storage of petrol/diesel/naptha/solvent etc. are covered under the Petroleum Act, 1934.

#. The then learned APP Shri Mehta was given time to confirm about the genuineness of this letter. Today, Shri Joshi has filed xerox copy of the confirmation that storage of solvent, petrol, diesel and naptha do not fall under the Explosive Substances Act. In view of this confirmation, Shri Lakhani argued that the charge under sec.5 of the Explosive Substances Act can not be framed.

Shri Joshi, however, argued that charges have not yet been framed, hence, the matter be sent to the trial Judge for framing appropriate charges.

#. The impugned order shows that application of the revisionist for discharge under sec.5 of the Explosive Substances Act was dismissed and it was ordered that charges be framed accordingly. Shri Lakhani, therefore, argued that the order of dismissal of the application for discharge under sec.5 of the Explosive Substances Act is illegal.

#. Sec.2 of the Explosive Substances Act provides that the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

It is, therefore, clear from the definition of explosive substance that, by a fiction of law it shall be deemed to include any material for making any explosive substance and also apparatus, machine, implement, etc. for making any such substance causing any such explosion. On the plain reading of this definition, it is clear that storage of petrol, naptha, diesel or solvent is not storage of explosive substance, nor it was stored at the old petrol pump with an intention or for the purpose of making some explosive substance. It is not the purpose of storage, which is material. The trial Judge has found that the storage itself was illegal and unlawful and therefore charge can be framed under sec.5 of the Explosive Substances Act. The observation of the trial Judge is that, prima facie it has been established that the possession of explosive substance at the place of offence does not appear to be for a lawful object and there is reasonable cause that the accused persons are not making it or does not have it in their possession or under control for a lawful object. It is further observed by the trial Judge, whether it was intention of the accused persons to use it for explosion or not, is not of any substance at this stage. Here, at this stage, the trial Judge has completely lost sight of the definition contained in sec.2 of the Act. It is not the purpose for which the solvent, etc. was stored that will make an offence punishable under sec.5 of the Explosive Substances Act. Unless, the petrol, diesel, naptha and solvent were stored for making any explosive substance, sec.2 of the Explosive Substances Act could not be

attracted.

#. Incidentally, it may be mentioned that the Supreme Court in Mohammad Usman Mohammad Hussain V/s. State of Maharashtra 1981(2) S.C.C. 443 has enumerated not in exhaustive term but as illustration that the explosive substance includes highly explosive gun powder, blasting powder, mixture of potassium chlorate and sulphur, detonators, special gelatines, sulphur, potassium cyanide, live catridges, 12 bores and mixture of sulphur and potassium chlorate. Though, this list is not exhaustive to cover all types of explosive substance, yet from this list it is clear that petrol, diesel, naptha and solvent can not prima facie be considered to be explosive substance.

#. It may be mentioned that even the Government of India is not considering storage of petrol, diesel, naptha and solvent to be covered under the definition of the explosive substance as defined under sec.2 of this Act. The stand of the Government of India is that storage of petrol, diesel, naptha and solvent are covered under the Petroleum Act. Consequently, there is no prima facie material to proceed against the revisionist and other accused under sec.5 of the Explosive Substances Act.

##. The trial Judge was, therefore, in error in rejecting the application of the revisionist for discharge under sec.5 of the Explosive Substances Act. The revision is, therefore, allowed. The order of the Additional Sessions Judge, Rajkot under challenge is hereby set aside. He is directed to proceed to frame charges under other sections for which the accused and the revisionist have been sent up to face trial and proceed to try them in due course/routine course.

June 21, 2001. (D.C. Srivastava, J.)

/sakkaf